IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.80 OF 2000

1. Shri Sergio A. Gonsalves,
2. Shri Kasim Aga,
3. Shri Amrut V. Gaonkar,
4. Shri Krishna K. Bhat Fugro,
5. Shri Shrirang S. Dharangutti,
6. Shri Subhas R. Kamat,
7. Shri Albert L. Azavedo,
8. Shri Domnic Marshall,
9. Shri Vithal P. Dessai,
10. Shri Shreedharan K.
11. Shri Rauji D. Priolkar,
12. Smt.Asha V. Naik,
13. Smt. Neera S. Naik,
14. Smt. Julie Mendes,

All the petitioners working as
Senior Assistants, Secretariat,
Government of Goa. ..... Petitioners.

Vs.

State of Goa, through its
Chief Secretary, having Office
at Secretariat, Panaji, Goa. ..... Respondent.

Mr. M.S. Sonak, Advocate for the petitioners.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Addl. Govt. Advocate for the respondent.

CORAM : F.I. REBELLO &
P.V. HARDAS, JJ.

DATE : JULY 29, 2003.

ORAL JUDGMENT: (Per REBELLO, J.)

The petitioners by the present petition, seek various reliefs, including for a writ of mandamus, commanding the respondents to pay to the petitioners salary in the pay scale of 5500-9000 with effect from

the date of implementation of the recommendations of the Fifth Pay Commission. Writ is also sought to strike down the Order dated 27.10.1997. In support of the petition, it is contended on behalf of the petitioners that on or about 31.3.1988 they came to be promoted as Senior Assistants in the Secretariat. At the time of their promotions, the petitioners were offered the salary in the pay scale of Rs. 1400-2300. By orders passed on 23.3.1993 and 1.1.1996, their pay scale stood revised from Rs.1400-2300 to Rs.1640-2900 with effect from 1.7.1987 notionally. It is the case of the petitioners that there is an anomaly in the fixation of the petitioners' pay scale. The petitioners point out that prior to 30.5.1987, Goa was an Union Territory, centrally administered. Under the same employer there could not have been two different scales for the Secretariat staff. It is their further contention that with a view to achieve parity and thereby rationalise pay structure, an order dated 23.3.1993 came to be issued. A reference is then made to the order dated 27 10.1997, whereby the respondent State agreed to implement the recommendations of the Fifth Pay Commission with modifications as set out in the said order. The said order sets out that the revision for the Secretariat and non-Secretariat staff consequent to the Fourth Pay Commission report from

1.1.1996 shall be ignored for the purpose of equation of the pay scale as well as fixation of pay. It is the case of the petitioners that if pre-revised pay scale of Rs. 1640-2900 is considered, it will correspond to revised pay scale of Rs.5500-9000. However, relying on the order dated 27.10.1997, the pre-revised pay scale was considered as Rs.1400-2300 and accordingly, revised the salary in the pay scale of Rs.4500-7000. The petitioners protested against the same.

It is the case of the petitioners that Rahimtulla Aga and Diwan Rane came to be directly recruited as Senior Assistants in the Secretariat in the pay scale of Rs.1640-2900. Relying upon the order dated 27.10.1997 and 17.11.1997, their salary came to be reduced to Rs.4500-7000 as in the case of petitioners herein. The said two persons lodged their protests. By order dated 9.6.1999, the respondents were pleased to award Shri Aga and Shri Rane the revised pay scale of Rs.5500-9000. Shri Aga and Shri Rane continue to be the Senior Assistants in the Secretariat Cadre like the petitioners. The petitioners and the said two persons have same designations and discharge same duties. It is the petitioners' case that they being Senior Assistants, and as they shoulder greater responsibilities. The

only difference, if at all, in case of the petitioners and the said two persons, is that the petitioners were promotees to the post of Senior Assistant and the said two persons were direct recruits. Such distinction, it is pointed out, cannot form the basis for fixation of pay scales as it would amount to discrimination between persons similarly situated. Reference is them made to several other pay scales of some other persons holding different posts.

We do not propose to go into the issue on account of the view to be taken. Reliance is placed on the Judgment of the Supreme Court in the case of **Kamlakar and ors vs. Union of India,** 1999 (4) SCC 756 to contend that once people are in the same cadre, the method of recruitment is immaterial and they have to be treated alike.

3. On behalf of the respondent State, Under Secretary (Finance), Shri Dattaram Sardessai has filed affidavit, opposing the relief as prayed. In paragraph 2 of the affidavit, reference is made to some other petitions, including the Writ Petition No.138/99, in which the Government has filed an affidavit dated 14.7.2003, wherein the decision of the Government to withdraw the revised scales and reasons for such

decision has been stated, in detail. In the said affidavit, the respondents have basically explained the circumstances under which the Government decided not to give the revised scales after 1.1.1986 but to give the benefits of the Fifth Pay Commission on the basis of the pay scales which were granted pursuant to the Fourth Pay Commission recommendations with effect from 1.1.1986. The other averments are basically based on the state of the State finances and that it is open to the employer to decide in what manner and what scale has to be awarded considering its paying capacity. All these aspects have been considered by us while disposing of the Writ Petition Nos.322/1998 and 138/1999. It is,therefore, not necessary to go into that aspect of the matter.

4. The only question, therefore, is whether in the same Department, there can be two different pay scales. The direct recruits, as has been set out earlier, were given pay scales based on the notification of 1997 like the petitioners. dated 9.6.1999, Shaikh Rahimtulla Aga and Shri Diwan Rane, both Senior Assistants were awarded Fifth Pay Commission pay scale of Rs.5500-9000 with effect from 1.1.1996 i.e. the date of implementation of the Fifth Pay Commission's recommendations. The order further

sets out that the pay scale shall be personal to them. In the affidavit, the reason for this has not been given. But at the Bar, on behalf of the respondent, learned Advocate General sought to explain it as on the ground that at the time when the posts were advertised what was advertised was the revised pay scale and it is in these circumstances, both the direct recruits were given the said pay scale. It is further explained that the Government proposes to reconsider the said pay scales.

5. In our opinion, there cannot be two different pay scales in the same Department for persons holding the same posts and in the same cadre. Mr. Aga and Mr. Rane have been given the revised pay scale of Rs.5500-9000 with effect from 1.1.1996; whereas the petitioners herein have been given the pay scale of Rs.4500-7000. This will be clearly discriminatory and or arbitratory. Two persons similarly situated should be treated alike. In Kamlakar and ors. vs. Union of India (supra) different pay scales were sought to be given, one for direct recruits and the other for promotees. The Apex Court negated the said contention and pointed out that once direct recruits and promotees are in one cadre, the distinction between them disappears at any rate so far as equal treatment in the

same cadre for payment of pay scale is concerned. The birthmarks have no relevance in this connection. It is not the contention herein that the respondents herein who were direct recruits were given different pay scale on account of higher qualification as contemplated under the recruitment rules. Once that is not the case, it was impermissible for the respondents to give one scale to the promotees and the other to the direct recruits. The two should be treated alike.

6. There was also challenge to the Notification dated 27.10.1997. That challenge was also raised in Writ Petitions No.322/1998 and 138/1999 which has been disposed of by a separate Judgment passed on 28.7.1999. Challenge to that notification on the grounds taken in that petition, has been negatived. The challenge in this petition is also similar. In the light of that, the challenge to Notification dated 27.10.1997 stands rejected.

However, considering what has been set out earlier, the petition will have to be allowed on the ground that those similarly situated cannot be differentiated in so far as their pay scales are concerned.

In the light of that, Rule is made absolute in terms of prayer Clause (b). So far as contention of the respondent State is concerned that they propose to revise the pay scales, we have nothing to say and it is open to them to take such decision, as they deem fit.

In the circumstances of the case, there shall be no order as to costs.

F.I. REBELLO, J.

P.V. HARDAS, J.

ssm.